

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENNY LAUREN MERSAND,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

FILED
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/9/2022

20-cv-6504 (NSR)(AEK)

ORDER ADOPTING REPORT
AND RECOMMENDATION

NELSON S. ROMÁN, United States District Judge:

Plaintiff, Jenny Lauren Mersand (“Plaintiff”), proceeding *pro se*, commenced this action seeking review of a determination of the Commissioner of the Social Security Administration (“SSA” or “Defendant”) pursuant to 42 U.S.C. § 405(g) denying her application for social security income (“SSI”) benefits. Plaintiff filed a motion seeking a court order reversing the SSA’s determination and Defendant cross-moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure § 12(c). (ECF Nos. 14, 18). This case was referred to Magistrate Judge Andrew E. Krause (“Judge Krause”) pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure § 72(b) to issue a Report and Recommendation (“R&R”). On August 19, 2022, Judge Krause issued an R&R recommending that Plaintiff’s motion be granted and Defendant’s cross-motion be denied. (ECF No. 23.) For the following reasons, the Court adopts Judge Krause’s R&R in its entirety, without opposition, and remands the matter to the Defendant for further proceedings.

BACKGROUND

The Court assumes familiarity with the underlying facts and prior proceedings in this case as set forth in the R&R. Plaintiff timely commenced the instant action on or about August 17, 2020, after the SSA Appeals Council denied her request for review of the Administrative Law Judge’s (“ALJ”) determination denying her benefits. (ECF No. 1.). On March 3, 2021, Plaintiff filed a

motion seeking reversal of the SSA's determination on the basis that the administrative record did not support a denial of benefits. (ECF No. 14.) On June 15, 2022, Defendant cross-moved for judgment on the pleadings on the basis that the ALJ's finding that Plaintiff is not disabled and therefore not eligible for SSI benefits is well supported by the record. (ECF No. 18.) On August 19, 2022, Judge Krause issued the R&R recommending, *inter alia*, that this Court grant Plaintiff's motion, seeking reversal of the ALJ's determination, be granted and remand the matter to the SSA for further proceedings in accordance with 42 U.S.C. § 405(g), and denying Defendant's motion for judgment on the pleadings. No objection to the R&R has been filed in this matter.

STANDARD OF REVIEW

A magistrate judge may "hear a pretrial matter dispositive of a claim or defense" if so designated by a district court. *See* Fed. R. Civ. P. § 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B). In such a case, the magistrate judge "must enter a recommended disposition, including, if appropriate, proposed findings of fact." Fed. R. Civ. P. § 72(b)(1); *accord* 28 U.S.C. § 636(b)(1). Where a magistrate judge issues a report and recommendation,

[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1); *accord* Fed. R. Civ. P. § 72(b)(2), (3). However, "[t]o accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *accord Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) ("[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision.") (quoting *Small v. Sec. of HHS*, 892 F.2d 15, 16 (2d Cir. 1989); *see also* Fed. R. Civ. P. § 72 advisory committee note (1983 Addition, Subdivision (b)) ("When no timely

objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

DISCUSSION

Here, neither party has filed an objection to the R&R issued by Judge Krause. Accordingly, the Court reviews the R&R for clear error.

The Court finds no error on the face of the R&R and adopts Judge Krause’s recommendation in its entirety. Judge Krause properly reviewed the administrative record and determined that the ALJ failed to properly apply the requisite five-step inquiry used for determining disability. In particular, Judge Krause noted that the ALJ failed to apply the requisite standard for evaluating a claimant’s mental impairment as referenced in paragraph C for Listings 12.04 and/or 12.06, and instead the ALJ had applied an older version of that standard that was later revised. *See* 81 Fed. Reg. 66138-01, 2016 WL 5341732 (S.S.A. Sept. 26, 2016). In light of the ALJ’s failure to apply the correct standard, reversal of the ALJ’s determination is warranted. *See Rodriguez ex rel. V.R. v. Comm’r of Soc. Sec.*, No. 1:13-CV-02152 ALC, 2014 WL 4792076, at *1 (S.D.N.Y. Sept. 25, 2014) (Reversal is warranted where the ALJ applied the wrong Listing(s) of Impairments when evaluating a claimant's alleged disability).

CONCLUSION

For the reasons stated above, this Court adopts Judge Krause’s R&R in its entirety. Plaintiff’s motion seeking reversal of the ALJ’s determination is GRANTED and Defendant’s cross-motion for judgment on the pleadings is DENIED. The Clerk of Court is respectfully directed to terminate the motions (ECF Nos. 14 and 18.), enter judgment in favor of the Plaintiff and remand the case to the SSA for further proceedings consistent with the R&R and this Order.

Dated: September 09, 2022
White Plains, New York

SO ORDERED:

A handwritten signature in blue ink, appearing to read "Nelson S. Román", is written over a horizontal line.

NELSON S. ROMÁN
United States District Judge